

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Lynda H. Young, et al.

v.

Civil No. 12-cv-00059-JL

CitiMortgage, Inc.

ORDER AFTER PRELIMINARY
PRETRIAL CONFERENCE

The Preliminary Pretrial Conference was held in chambers on **May 10, 2012.**

The Discovery Plan (document no. 8) is approved as submitted, with the following changes:

- Expert challenges - **December 15, 2012**
- Summary judgment deadline - **120 days prior to final pretrial conference**
- Jury trial - **May, 2013**

Based on the discussions between the court and counsel at the conference, the following are **stricken** without prejudice to being reinstated on request if warranted by the evidence:

- Counts 2, 3, 5 and 6 of the Complaint.

The plaintiff will file an amended complaint on or before **June 1, 2012.**

- the following affirmative defenses: waiver, estoppel, consent, ratification.

In amending, counsel are reminded that the federal Fair Debt Collection Practices Act excludes from the definition of "debt

collector" any person or entity collecting or attempting to collect "a debt which was not in default at the time it was obtained by such person," 15 U.S.C. § 1692a(6) (F) (iii), and therefore generally excludes mortgage servicers, "as long as the debt was not in default at the time it was assigned." [Perry v. Stewart Title Co.](#), 756 F.2d 1197, 1208 (5th Cir. 1985); see also [Crepeau v. JP Morgan Chase Bank, N.A.](#), No. 11-cv-125-JL, 2011 WL 6937508, *5 (D.N.H. Dec. 5, 2011).

Summary Judgment. The parties and counsel are advised that compliance with [Rule 56\(e\)](#) and Local Rule 7.2(b), regarding evidentiary support for factual assertions, and specification and delineation of material issues of disputed fact, will be required.

Discovery disputes. Discovery disputes will be handled by the undersigned judge, as opposed to the Magistrate Judge, in the normal course. No motion to compel is necessary. The party or counsel seeking discovery-related relief should confer with adverse counsel to choose mutually available dates, and then contact the Deputy Clerk to schedule a conference call with the court. The court will inform counsel and parties what written materials, if any, should be submitted in advance of the conference call.

Customary motions to compel discovery, while disfavored by the undersigned judge, are nonetheless permissible. If counsel

prefer traditional discovery litigation to the conference call procedure set forth above, any such motion to compel should expressly request, in the title of the motion, a referral to the United States Magistrate Judge. Such referral requests will normally be granted. If the Magistrate Judge is recused, alternate arrangements will be made.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: May 11, 2012

cc: Allen James Lucas, Esq.
John A. Houlihan, Esq.
Joshua William Gardner, Esq.